

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FREDERICK JOSEPH JENNIS,
Petitioner,

- v -

9:03-CV-702
(NAM/RFT)

FRANK McCRAY,
Respondent.

APPEARANCES:

Frederick Joseph Jennis
Petitioner, *Pro Se*

Hon. Eliot Spitzer, Attorney General of the State of New York
Senta B. Siuda, Esq., Assistant Attorney General
The Capitol
Albany, New York 12224
Attorney for Respondent

Hon. Norman A. Mordue, Chief U.S. District Judge

MEMORANDUM-DECISION AND ORDER

Petitioner, an inmate in the custody of the New York State Department of Correctional Services, brought this proceeding for habeas corpus under 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge Randolph F. Treece for a Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.4.

In an excellent Report and Recommendation (Dkt. No. 13), Magistrate Judge Treece recommends that the petition be dismissed. Petitioner objects (Dkt. No. 14). Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of those parts of a magistrate judge's report-recommendation to which a party specifically objects.

On *de novo* review, the Court concludes that the trial court's refusal to charge the jury on

the defense of justification was not contrary to federal law as determined by the Supreme Court, nor was it an unreasonable determination of the facts and law presented in the state court proceedings. 28 U.S.C. § 2254(d); *see Davis v. Strack*, 270 F.3d 111, 123 (2d Cir. 2001) (stating that to obtain a writ of *habeas corpus* based on a state court's jury instructions, the petitioner must establish that the instruction violated some right which was guaranteed to him by federal law). Accordingly, the Court accepts and adopts the Report and Recommendation and dismisses the petition.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge Randolph F. Treece (Dkt. No. 13) is accepted and adopted; and it is further

ORDERED that the petition is dismissed.

IT IS SO ORDERED.

September 27, 2006
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge